

DEPARTMENT OF THE TREASURY

26 CFR Part 1

REG-131264-04

RIN 1545-BD55

Withdrawal of Proposed Regulations Regarding Intercompany Transactions;
Manufacturer Incentive Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking (REG-131264-04) regarding the treatment of manufacturer incentive payments. The proposed regulations were published in the **Federal Register** on August 13, 2004 (69 FR 50112). After consideration of additional issues, the IRS and Treasury Department have decided to withdraw the proposed regulations.

DATES: These proposed regulations are withdrawn on May 8, 2006.

FOR FURTHER INFORMATION CONTACT: Frances Kelly, (202) 622-7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 13, 2004, the IRS and Treasury Department published a notice of proposed rulemaking (REG-131264-04) in the **Federal Register** (69 FR 50112) proposing regulations to address additional transactions involving manufacturer incentive payments and to clarify the proper treatment of such incentive payments under the intercompany transaction regulations.

On April 25, 2005, the IRS and Treasury Department published Rev. Rul. 2005-28 (2005-19 IRB 997), which suspends, in part, Rev. Rul. 76-96 (1976-1 CB 23). Rev. Rul. 2005-28 states that the IRS will not apply, and taxpayers may not rely upon, the conclusion reached in Rev. Rul. 76-96 that certain rebates made by a manufacturer to retail customers are ordinary and necessary business expenses deductible under section 162, pending the IRS's reconsideration of the issue and publication of subsequent guidance.

The example in paragraph (c) of the proposed regulations relies, in part, upon the premise that the manufacturer incentive payment is an ordinary and necessary business expense deductible under section 162. To the extent that this premise is correct, paragraph (d) of the proposed regulations illustrates the proper application of the intercompany transaction regulations. However, because Rev. Rul. 2005-28 suspends Rev. Rul. 76-96, in pertinent part, these paragraphs of the proposed regulations are withdrawn pending further guidance on the section 162 issue considered in Rev. Rul. 76-96.

The example in paragraph (e) of the proposed regulations illustrates the application of the original issue discount rules to the facts described in paragraph (e) and, based on these facts, concludes that the transaction is not an intercompany transaction. This conclusion is not dependent upon the issue being reconsidered in Rev. Rul. 76-96. Nevertheless, because the example in paragraph (e), standing alone, does not provide guidance with respect to the application of the intercompany transaction regulations to an intercompany transaction, paragraph (e) of the proposed regulations is also withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed

rulemaking (REG-131264-04) that was published in the **Federal Register** on August 13, 2004 (69 FR 50112) is withdrawn.

/s/ Mark E. Matthews
Deputy Commissioner for Services and Enforcement.